ATTORNEY FOR APPELLANT:

KENNETH R. MARTIN
Goshen, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

J.T. WHITEHEAD
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

DONALD W. SNOVER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 20A03-0704-CR-155
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ELKHART CIRCUIT COURT
The Honorable Terry C. Shewmaker, Judge
Cause No. 20C01-0406-FA-70

August 28, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Donald W. Snover was convicted of possession of methamphetamine in excess of three grams with intent to deliver,[1] a Class A felony, after a jury trial and was sentenced to thirty-seven years in the Department of Correction. He appeals, raising several issues, which we restate as:

I. Whether sufficient evidence was presented to support his conviction;

II. Whether the trial court abused its discretion in giving a jury instruction that he claims effectively directed the jury to find he had the requisite intent to deliver; and

III. Whether he was properly sentenced.

We affirm.

FACTS AND PROCEDURAL HISTORY

On May 29, 2004, the Elkhart Police Department performed a controlled narcotics purchase at Snover's home. The police equipped the informant making the purchase with a recording device and with three hundred dollars of buy money, which had been previously photocopied. The informant returned to the police with what was believed to be methamphetamine after entering and leaving Snover's home. Approximately four to five hours later, after obtaining a search warrant, officers arrived at Snover's home. Snover was at home with his wife and son when the police executed the warrant.

During the search, the police discovered drugs, including 0.14 grams of methamphetamine, 6.98 grams of amphetamine, 3.19 grams of methamphetamine, 112.51 grams of amphetamine, 26.42 grams of marijuana, 1.06 grams of marijuana, 10.89 grams of marijuana, plastic baggies of different sizes, a digital scale, unused glass pipes and tubes that

[1] *See* IC 35-48-4-1 (now IC 35-48-4-1.1).

could be used for smoking methamphetamine, $810.00 in cash, and $233.00 in cash found on Snover's person. After advising Snover of his rights, Officer Carl James Buchmann questioned Snover about the drugs found in his home. Snover told Officer Buchmann that he lived at the home where the search warrant was executed, that there was methamphetamine in the home, and where the methamphetamine was located. Snover told Officer Buchmann that he believed that the amount he possessed was 120 grams. *Tr*. at 151. Snover also admitted to Officer Buchmann that he sold methamphetamine. *Id*. at 154. Snover told Buchmann about two buyers he had dealt with earlier in the night, one of whom was the informant who conducted the controlled buy. Snover admitted selling a quarter of an ounce to that buyer. *Id*. at 155. He also told Officer Buchmann that he had purchased a half-pound of methamphetamine earlier in that same week, for which he paid $2,700.00. *Id*. at 158. The evidence collected from Snover's home were sent to the State Police Laboratory where it was confirmed that it consisted of methamphetamine in quantities of 0.14 grams and 3.19 grams, amphetamine in quantities of 6.98 grams and 112.51 grams, and marijuana.

The State charged Snover on June 2, 2004 with Class A felony possession of methamphetamine in excess of three grams with intent to deliver. A jury trial was held on June 6-7, 2005, and the jury found Snover guilty as charged. The trial court found that the aggravating circumstances of his criminal history and the fact that the instant offense was committed while Snover was on bond outweighed the mitigating circumstance of Snover's admitted addiction issues. The trial court then sentenced him to thirty-seven year in the Department of Correction. Snover now appeals.

DISCUSSION AND DECISION

I. Sufficiency of the Evidence

Our standard of review for sufficiency claims is well settled. We do not reweigh the evidence or judge the credibility of the witnesses. *Dickenson v. State*, 835 N.E.2d 542, 551 (Ind. Ct. App. 2005), *trans. denied*. We will consider only the evidence most favorable to the judgment together with the reasonable inferences to be drawn therefrom. *Id*.; *Robinson v. State*, 835 N.E.2d 518, 523 (Ind. Ct. App. 2005). We will affirm the conviction if there is sufficient probative evidence to support the judgment of the trier of fact. *Dickenson*, 835 N.E.2d at 552; *Robinson*, 835 N.E.2d at 523.

Snover argues that insufficient evidence was presented to support the element of intent to deliver methamphetamine. In order to convict Snover, the State was required to prove that he knowingly or intentionally possessed methamphetamine in the amount of three or more grams with the intent to deliver. IC 35-48-4-1 (now IC 35-48-4-1.1). Snover specifically contends that the quantity and location of the methamphetamine strongly suggested that it was for personal consumption and not for sale or delivery. Conversely, the large amount of amphetamine and its location suggested that it was not for personal consumption and was ready for sale. Therefore, he claims that the State did not prove that he possessed methamphetamine in an amount over three grams with the intent to deliver.

Viewing the evidence most favorable to the judgment, as we must do, we conclude that sufficient evidence was presented to support Snover's conviction. The evidence showed that over three grams of methamphetamine were discovered in Snover's home, specifically in the amounts of 0.14 grams and 3.19 grams. Snover also told Officer Buchmann that he sold methamphetamine and had sold to two different buyers earlier in the evening, one of which

was the informant who conducted the controlled buy. It is immaterial that a substantial amount of what Snover believed was methamphetamine was in fact amphetamine when he possessed over three grams of methamphetamine and admitted to selling the drug.

II. Jury Instruction

Instructing the jury lies within the sound discretion of the trial court. *Kelly v. State*, 813 N.E.2d 1179, 1185 (Ind. Ct. App. 2004), *trans. denied*. The trial court's decision will not be reversed unless the instructional error is such that the charge to the jury misstates the law or otherwise misleads the jury. *Id*. Jury instructions are to be considered as a whole and in reference to each other. *Id*. Before a defendant is entitled to a reversal, he must affirmatively show that the erroneous instruction prejudiced his substantial rights. *Gantt v. State*, 825 N.E.2d 874, 877 (Ind. Ct. App. 2005).

Snover contends that the trial court abused its discretion when it gave Instruction 7 over his objection. Instruction 7 stated:

> "Intent to deliver" is a mental state for which you may consider the surrounding circumstances. Circumstantial evidence of intent to deliver may include, but is not limited to, possession of an amount of methamphetamine greater than that needed for personal use, presence of scales, possession of a large number of plastic bags or other items commonly used for packaging such controlled substances, and/or presence of other items such as drug paraphernalia, or cash.

Appellant's App. at 60. Snover asserts that this instruction was improper because it was tailored to precisely fit the evidence of the present case and effectively directed the jury to find that he had the requisite intent to deliver.

Here, the instruction given correctly stated the law. "Because intent is a mental state, triers of fact generally must resort to the reasonable inferences arising from the surrounding

circumstances to determine whether the requisite intent exists." *Wilson v. State*, 754 N.E.2d 950, 957 (Ind. Ct. App. 2001) (citing *McGuire v. State*, 613 N.E.2d 861, 864 (Ind. Ct. App. 1993), *trans. denied*). Many cases have found that circumstantial evidence of intent to deliver, such as possession of a large quantity of drugs, large amounts of currency, scales, plastic bags, and other paraphernalia as well as evidence of other drug transactions, can support a conviction. *Id*. at 957; *Ladd v. State*, 710 N.E.2d 188, 191 (Ind. Ct. App. 1999); *McGuire*, 613 N.E.2d at 864. Additionally, Snover's substantial rights were not prejudiced by the instruction because in addition to the circumstantial evidence that was presented to prove intent to deliver, evidence was also presented that Snover admitted to Officer Buchmann that he sold methamphetamine and had conducted two transactions earlier in the evening. Therefore, we conclude that the trial court did not abuse its discretion when it gave Instruction 7 because it was a correct statement of the law and it did not prejudice Snover's rights.

III. Sentencing

Sentencing decisions are within the sound discretion of the trial court and are reviewed on appeal only for an abuse of that discretion. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007) (citing *Smallwood v. State*, 773 N.E.2d 259, 263 (Ind. 2002)). An abuse of discretion occurs if the decision is clearly against the logic and effect of the facts and circumstances and the reasonable inferences drawn therefrom. *Id*. We can only review the presence or absence of reasons justifying a sentence for an abuse of discretion, but we cannot review the relative weight given to these reasons. *Id*. at 491.

Snover challenges his sentence of thirty-seven years arguing that the trial court incorrectly weighed the aggravating and mitigating circumstances and that the sentence is inappropriate considering the nature of the offense and his character. Because we no longer review the weight a trial court assigns to aggravating and mitigating circumstances, we do not address Snover's first argument and will only review his sentence for appropriateness. *Id*.

Appellate courts may revise a sentence after careful review of the trial court's decision if they conclude that the sentence is inappropriate based on the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B). Even if the trial court followed the appropriate procedure in arriving at its sentence, the appellate court still maintains a constitutional power to revise a sentence it finds inappropriate. *Hope v. State*, 834 N.E.2d 713, 718 (Ind. Ct. App. 2005). Snover contends that his sentence of thirty-seven year was inappropriate in light of the nature of the offense and his character and that it should be revised to twenty years. We disagree.

As to the nature of the offense, when the search warrant was served at Snover's home, the police discovered over three grams of methamphetamine, plastic baggies, scales, drug paraphernalia, and large amounts of cash, and Snover admitted that he sold methamphetamine and had done so earlier in the evening. Additionally, marijuana and a large amount of amphetamine were found in Snover's home. As to Snover's character, the evidence showed that he had five prior felony convictions, which included forgery, theft, maintaining a common nuisance, possession of a controlled substance, and possession of methamphetamine in excess of three grams with intent to deliver. He also had several

misdemeanor convictions, which included two convictions for driving while intoxicated and one conviction each for false informing and criminal mischief. Additionally, Snover was on bond for a pending charge of dealing in cocaine or a narcotic drug as a Class A felony when he committed the present offense. In light of the above evidence, we do not believe that Snover's sentence of thirty-seven years for a Class A felony possession of methamphetamine over three grams with intent to deliver was inappropriate.

Affirmed.

DARDEN, J., and MATHIAS, J., concur.